

STATE OF MICHIGAN
COURT OF APPEALS

LANIECE MOORE, Personal Representative of
the ESTATE OF SHANE KERNETT MOORE,

UNPUBLISHED
November 9, 2004

Plaintiff-Appellant,

v

STATE OF MICHIGAN,

No. 249111
Court of Claims
LC No. 99-017172-CM

Defendant-Appellee.

Before: Murray, P.J., and Sawyer and Smolenski, JJ.

PER CURIAM.

Plaintiff, acting on behalf of the estate of an inmate who died while in the custody of the Department of Corrections (DOC), appeals as of right from the order of the Court of Claims granting defendant summary disposition. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

The decedent began a prison term for armed robbery in 1993. He entered the system with a history of convulsions stemming from a head injury suffered in a shooting incident two years earlier. He had prescriptions for anti-convulsion drugs, but in prison tended to hoard the pills. For that reason, and because he seemed not to be suffering further seizures, medical personnel ceased administering them. In early June 1996, the decedent began a period of unresponsiveness, which came to include a hunger strike. He was regularly observed and evaluated by medical personnel, but as of June 15, had not resumed eating, and died later that day. The official cause of death was cardiac arrhythmia associated with seizure disorder stemming from the gunshot wound to the head.

Alleging that the decedent died as the result of misconduct on the part of DOC personnel, plaintiff brought suit in the Court of Claims, which stayed its proceedings when the matter was transferred to federal district court for litigation of plaintiff's claims pursuant to 42 USC 1983. In the federal court, a number of defendants were dismissed, leaving only a single doctor as a defendant. The case went to trial, and the jury found no cause of action.

Plaintiff returned to the Court of Claims to press her claim against the state that its policies and procedures attendant to prisoners on hunger strikes violated our state constitution's guarantees of due process¹ and freedom from cruel or unusual punishments.² The court granted defendant's motion for summary disposition, finding that plaintiff's claims were barred by the doctrines of res judicata and collateral estoppel.

This Court reviews "applications of res judicata, as well as decisions regarding motions for summary disposition, de novo as questions of law." *Wayne Co v Detroit*, 233 Mich App 275, 277; 590 NW2d 619 (1998). The applicability of collateral estoppel likewise presents a question of law, calling for review de novo. *McMichael v McMichael*, 217 Mich App 723, 727; 552 NW2d 688 (1996).

Collateral estoppel precludes relitigation of an issue in a different, subsequent action between the same parties or their privies when the earlier proceeding resulted in a valid final judgment and the issue in question was actually and necessarily determined in that prior proceeding. See *People v Gates*, 434 Mich 146, 154; 452 NW2d 627 (1990); 1 Restatement Judgments, 2d, § 27, p 250. The doctrine bars relitigation of issues where the parties had a full and fair opportunity to litigate those issues in an earlier action. *Arim v General Motors Corp*, 206 Mich App 178, 195; 520 NW2d 695 (1994). Similarly, "Under the doctrine of res judicata, 'a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action.'" *Wayne Co, supra* at 277, quoting Black's Law Dictionary (6th ed, 1990), p 1305. "The doctrine operates where the earlier and subsequent actions involve the same parties or their privies, the matters of dispute could or should have been resolved in the earlier adjudication, and the earlier controversy was decided on its merits." *Wayne Co, supra* at 277.

Both doctrines apply in this case. Concerning res judicata, plaintiff's cause of action carried through to a final judgment on its merits in federal court. The claim concerned her allegations that the decedent suffered mistreatment at the hands of prison officials that resulted in his death. Plaintiff chose a course of action such that upon returning to the Court of Claims she was pressing an already-adjudicated claim regardless of how it was restyled. Privity is a "[d]erivative interest founded on, or growing out of, contract, connection, or bond of union between parties; mutuality of interest." Black's Law Dictionary (6th ed, 1990), p 1199. Plaintiff sued several DOC employees, persons in privity of contract with the state of Michigan, over their actions pursuant to DOC policy. The trial court correctly deemed the action barred by res judicata.

Collateral estoppel likewise operates to bar plaintiff's claim. Because plaintiff fully litigated the issue of misconduct on the part of DOC employees in the federal court, the issue whether the decedent was wronged by the alleged misconduct was actually and necessarily

¹ Const 1963, art 1, § 17.

² Const 1963, art 1, § 16.

determined in that prior proceeding. See *Gates, supra* at 154; 1 Restatement Judgments, 2d, § 27, p 250. Because plaintiff, in federal court, failed to show that any misconduct took place in connection with the individual actors, collateral estoppel bars her from alleging that policies of the DOC, and thus of the state, resulted in such misconduct. The trial court correctly deemed the action below barred by collateral estoppel.³

We additionally agree with defendant's alternative argument that dismissal was proper because relief for what plaintiff characterized as a Michigan constitutional claim was available through different mechanisms.

The state is subject to liability for violations of the state constitution, but only where no other remedy is available. *Jones v Powell*, 462 Mich 329, 336-337; 612 NW2d 423 (2000), citing *Smith v Dep't of Pub Health*, 428 Mich 540; 410 NW2d 749 (1987), *aff'd sub nom Will v Dep't of State Police*, 491 US 58; 109 S Ct 2304; 105 L Ed 2d 45 (1989). In this case, plaintiff, representing the decedent's estate, sought monetary damages as a remedy for the decedent's suffering and death. Because plaintiff had a cause of action under § 1983 against the individuals who allegedly mistreated her decedent, a remedy was available for any injuries she could prove, and the availability of that avenue for relief foreclosed a constitutional tort action against the state itself. See *Jones, supra* at 339 (Kelly, J., concurring).

Affirmed.

/s/ Christopher M. Murray

/s/ David H. Sawyer

/s/ Michael R. Smolenski

³ As plaintiff points out, plaintiff could not sue the state in federal court on any theory. See *Bd of Trustees of the Univ of Alabama v Garrett*, 531 US 356, 363; 121 S Ct 955; 148 L Ed 2d 866 (2001), citing US Const, Am XI and *Hans v Louisiana*, 134 US 1, 15; 10 S Ct 504; 33 L Ed 842 (1890). Nor could she sue the state in state court for violations of the federal constitution. *Bay Mills Indian Community v Michigan*, 244 Mich App 739, 749; 626 NW2d 169 (2001). However, she could have maintained her § 1983 claims in state court. *Gordon v Sadasivan*, 144 Mich App 113, 119; 373 NW2d 258 (1985). There, specifically in the Court of Claims, plaintiff could have sued the state on whatever theory she chose. Instead, she chose to sue several DOC employees on her § 1983 action in federal court. She thus effectively waived any claims against the state itself. "[T]he availability of a choice of forums should not be manipulated . . . as a means of litigating the same claim in separate arenas." *Dearborn Heights School Dist No 7 v Wayne Co MEA/NEA*, 233 Mich App 120, 130 n 6; 592 NW2d 408 (1998).